

Division 17: Mines, Industry Regulation and Safety — Services 1 to 3, Commerce, \$287 493 000 —

Ms J.M. Freeman, Chair.

Mr J.R. Quigley, Minister for Commerce.

Mr D. Smith, Director General.

Ms K. Berger, Deputy Director General.

Ms L. Chopping, Commissioner for Consumer Protection.

Mr S. Abdoolakhan, Executive Director, Building and Energy.

Mr R. De Giorgio, Chief Finance Officer.

Ms M. Haasnoot, Executive Director, Corporate Services.

Ms C. Bam, General Manager, Service Delivery Support.

Mr J. Lee, Principal Policy Adviser.

Mr R. Sao, Principal Policy Adviser.

[Witnesses introduced.]

The CHAIR: This estimates committee will be reported by Hansard. The daily proof *Hansard* will be available the following day. It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. Members should give these details in preface to their question. If a division or service is the responsibility of more than one minister, a minister shall be examined only in relation to their portfolio responsibilities.

The minister may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the principal clerk by Friday, 30 October 2020. I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice through the online questions system.

The member for Hillarys.

Mr P.A. KATSAMBANIS: I refer to page 251 of budget paper No 2, volume 2, and the heading, halfway down the page, "WA Recovery Plan". At paragraph 15.1 there is a discussion about the response to the national cabinet recommendations in relation to the Residential Tenancies (COVID-19 Response) Act 2020 and the Commercial Tenancies (COVID-19 Response) Act 2020, which we passed in this place earlier this year. With regard to the extension of the emergency period under the Residential Tenancies (COVID-19 Response) Act 2020 and the Commercial Tenancies (COVID-19 Response) Act 2020, which has now been extended to 28 March 2021, was that based on the advice of the Chief Health Officer?

Mr J.R. QUIGLEY: This was a decision taken by cabinet, not by the Chief Health Officer. This was a decision taken by cabinet to keep residential relief in alignment with what South Australia and Victoria had just announced. They and other states had decided to align it with the JobKeeper program, which finishes in March. As we have explained to industry, it is not the government's intention in any manner, shape or form to extend it beyond 28 March 2021, but the decision by cabinet was taken at a time when the situation in Victoria was dire and we had to take action to protect tenants in Western Australia in the face of what could have been, and still could be, a nasty second wave. By doing what we did, we are able to do it by regulation. If we had not done it, we could find ourselves with the Parliament prorogued, the government in caretaker mode, and no way to protect tenants in Western Australia. The Real Estate Institute of Western Australia and its chairperson have been to see me and are very comfortable with the fact that the period will not be extended unless there is a calamitous second wave that absolutely disrupts the Western Australian economy, in which case we would have to come back to Parliament.

[4.20 pm]

Mr P.A. KATSAMBANIS: Has the government considered perhaps curtailing and reining that extension back in, given that the Victorian situation seems to have changed significantly for the better—still on foot, but significantly for the better—and also given some of the issues that are arising in the residential housing market, particularly around the availability of rental housing stock, which seems to be at a record low at the moment?

Mr J.R. QUIGLEY: No, we have not looked at winding it back. There is certainty; everyone knows it will go through until 28 March. I want to stress that this rental relief is only for existing tenants who are able to demonstrate that

they come within the COVID JobSeeker definition; for example, they have demonstrated hardship that will enable them to qualify for JobSeeker and prevent eviction. This does not mean that landlords cannot evict people who are not paying their rent. However, they first have to go through a mandatory period of conciliation at the department. It is not until the department issues a certificate that the landlord has negotiated in good faith that they can go to the courts to seek eviction. Also, a number of exemptions apply; for example, landlords can evict if they wish to resume residency in the premises or when there is more than fair wear and tear or serious damage to the premises.

The member raised the issue of property vacancy rates having reached a low. The vacancy rate has just been reported at 0.96 per cent, or 2 926 properties. This data is taken from listings on the Real Estate Institute of Western Australia website. That is a drop of 254 properties from the previous month. The other thing I want to stress is that there is no cap on what investors can charge for a new lease. Therefore, they should not be reluctant to enter the market. They can buy a property and lease it out for whatever they like—whatever the market will bear. The rental relief is a freeze on rent rises for existing leases only. At the expiration of those leases, tenants can roll over into a periodic tenancy at the same rent, but only until 28 March. It is still open for investors to enter the market, knowing that, first, they can lease out their investment property for whatever they like; and, second, that come 28 March, there will be no inhibition on rent rises. Anyone who is renting out a property in October would not be looking to put up the rent by March.

Mr P.A. KATSAMBANIS: I do not know. The minister is a landlord; he can tell me.

Mr J.R. QUIGLEY: I am not a landlord at the moment; the member can look at my declarations. When people lease out a property, they lease it out for longer than six months before there is a rent increase. No, member, for those reasons we are not looking at curtailing the residential COVID rent relief prior to 28 March; and, in the same vein, we are not looking to extend it, either. I have to say that Mr Collins and the executive who attended upon me were relieved and comforted by the firm government statement that we will not extend it. It would have to take a massive second wave and disruption to the employment situation in Western Australia before the government would consider that step. When the member talks about Victoria, it is dicey, is it not? I hear there are further little outbreaks in Victoria today, including in an apartment block. We are dealing with a dynamic situation. We are very fortunate in Western Australia not to have had any community transmission. We can look at this retrospectively and ask what the point is; but we have had no community transmission. As the Premier has said in question time when the Assembly has been sitting, we were looking at the situation of facing a recession; everyone thought that.

Mr P.A. KATSAMBANIS: How much of the allocation of \$30 million that was made in conjunction with the legislation for the residential rent relief grant scheme has been paid out so far, and —

Mr J.R. QUIGLEY: Not a lot. I will pass that over to the Commissioner for Consumer Protection, if I may.

Mr P.A. KATSAMBANIS: Can I finish my question, though?

Mr J.R. QUIGLEY: Sorry, yes!

Mr P.A. KATSAMBANIS: How much has been paid out so far, and what is anticipated to be paid out between now and the end of this financial year?

Mr J.R. QUIGLEY: Put it this way, it will not be paid out until the end of the financial year, but it will go through only until 28 March. We did not have to top up the fund, because it had not been drawn down. I will pass over to the Commissioner for Consumer Protection, if I may, who will have the exact figures to hand.

Ms L. Chopping: The figures as of yesterday total \$6 508 246.48. In terms of the anticipated amount to be expended, it will be entirely dependent upon the economic and hardship circumstances that Western Australian tenants find themselves in. It is not possible to predict how many people will come forward for applications.

Mr P.A. KATSAMBANIS: Given that a significant amount of money has not been taken up, understanding that it will run only until March next year, and understanding that unless circumstances change drastically, there will be no great take-up, what will happen to the funds that were allocated? Will they be redirected; and, if so, where? Will they be returned to consolidated revenue?

Mr J.R. QUIGLEY: I will have to defer to the “director of unspent funds” within the department’s budget.

Mr D. Smith: As far as I am aware, no decision has been made on that. As the commissioner indicated, it will depend upon what remains in the fund. The eligibility criteria for the grant have been expanded; also, eligible tenants can apply for a second grant. At this stage, we are operating the scheme on the basis of the parameters that are determined by government, and government will assess that at a later point.

[4.30 pm]

Mr P.A. KATSAMBANIS: No current decision has been made about what to do with those funds.

Mr J.R. QUIGLEY: The low take-up reflects the strength of our economy.

Mr P.J. RUNDLE: On behalf of the many upset landlords who have rung me up, minister, would I be able to get the number of applicants who have applied?

Mr J.R. QUIGLEY: The number who have applied for hardship or landlords who are upset because they cannot raise their rent?

Mr P.J. RUNDLE: No; the number of people seeking rent relief.

Mr J.R. QUIGLEY: The first thing the member should be advising his constituents is to contact the commissioner—she can give the member the contact number now—for conciliation.

Mr P.J. RUNDLE: I have it all here in the minister's press release, so it is not a problem. I would like to know the number of applicants, and that will do me.

Mr J.R. QUIGLEY: I defer to Ms Chopping.

Ms L. Chopping: As of yesterday, 4 652 applicants had been paid that \$6 508 246.48. There had been 8 872 completed applications received. That does not necessarily mean that is the number of people who might have requested rent relief in another form through a rent rebate, a rent renegotiation or a rent waiver from their landlord.

Mr P.J. RUNDLE: I refer to the spending changes on page 249 and the second paragraph under "Significant Issues Impacting the Agency". The \$300 000 spent on the establishment of the Collie regional licensing processing centre, which was transferred from the Collie industry attraction and retention fund, allows for 10 public sector positions. Can the minister tell me how many of these positions are currently filled and whether the state government saved any money in converting the contract work into permanent public service positions; and, if so, how much?

Mr J.R. QUIGLEY: I defer to Ms Chopping.

Mr D. Smith: I will take that.

Mr J.R. QUIGLEY: The director general will take that one.

Mr D. Smith: The Collie regional licensing processing centre, which only opened earlier this month, undertakes some licence processing work that had previously been done in Perth. The funding in the budget reflects the funding that came, as the member indicated, from the Collie industry attraction and development fund, but the Department of Mines, Industry Regulation and Safety has also made a contribution from its ongoing budget, including the conversion of some previous contract positions into full-time positions. As part of the government's program for that, we were able to identify the opportunity to create some full-time positions. Eleven full-time and part-time employees were engaged and were operational from 31 August. They have been through a training program. Those savings were achieved in that conversion. We converted money that we had previously spent on contractors into permanent positions.

Mr P.J. RUNDLE: Does the minister expect to roll this scenario out into other regional centres, or is Collie the only focus?

Mr J.R. QUIGLEY: I will defer to the director general.

Mr D. Smith: Our focus for the immediate future is the Collie centre. It has been a significant change in approach for us to identify both the capacity to establish positions and the conversion of contractors into new positions. It has provided us with an opportunity to do that. We did not have to tap people on the shoulder in positions in Perth and say, "Do you want to move to Collie?" We were able to establish them as new positions. We may have the opportunity to do that again in the future, but we have not got any plans to do that. The Collie facility itself has some scope for expansion, should there be an opportunity to do that. We will certainly be exploring that option as we build experience with Collie.

Mr P.J. RUNDLE: How many of those employees have moved from the metropolitan area?

Mr D. Smith: I believe eight are from Collie or its close environs. The other employees are from a bit further afield but I do not think that any are from Perth.

Mr P.A. KATSAMBANIS: Paragraph 10 on page 250 refers to the Building and Construction Industry (Security of Payment) Bill 2020. The budget refers to the exposure draft, but that bill has now been introduced.

That bill now provides for retention moneys to be held in trust, but it does not provide the originally promised protection to subcontractors for payments in a series of cascading trusts, which had been discussed in the lead-up to the drafting of the bill. I note that paragraph 10 refers to the Fiocco report. The Murray report, federally, also recommended such trusts. When was the decision made to limit the trust protection to retention money only? Why was this decision taken as opposed to the recommendations made by Fiocco and Murray?

Mr J.R. QUIGLEY: Sure. If the member looks at the Labor Party's manifesto, the election promise made by Labor going into the last election was to protect subcontractor retention money and have retention trusts. We have delivered on that in the bill that has been introduced to the Assembly but not yet debated, as the member is aware.

Mr P.A. KATSAMBANIS: Yes, it has been introduced.

Mr J.R. QUIGLEY: It has been second read but not yet debated. We have fulfilled our election promise by the introduction of the bill. Whether it will pass within this Parliament is very problematic, but it will be first-up next March, if it is not passed before prorogation. When we came to office, it is true that my predecessor, Minister Johnston, commissioned John Fiocco to conduct a review of the Construction Contracts Act and the method of payment and trusts. It is also true that Mr Fiocco recommended we follow the Murray report, and the Collins report to the Liberal building minister in New South Wales, that there be a series of cascading trusts to cover all payments within the industry. Once the Fiocco report was published, I had come into the ministry. The cascading trusts did not form part of the election promise but went further than the election promise, so I discussed this with all sectors of the industry. I came to realise that once money is paid into a trust, there can be a dispute about whether the work being claimed has been done properly.

Therefore, there had to be a method of dispute resolution. In these construction contracts, the money has to be kept flowing, because if it is not, someone is going to go broke just because of cash flow. In Western Australia, we were faced with an anachronism called the west coast model, which gave the contracting parties primacy to decide time for payment, whether there could be progress payments and what would trigger those progress payments. Without that all being clarified by legislation, the risk was that if we had cascading trusts, money could get glugged up in the system. Although, as in the reports of Collins, Murray and Fiocco, it may be done with good intent and academically, the practical effect would be that unless the problem with payment schedules and the way to sort out payments was cleared up first, money would just get locked up in trusts and people would go bust. I did not want to be a party to that, especially in this climate of economic disruption due to COVID. We went back to the unions and the construction houses and told them that it was not off the table, but we would first have to do a massive reform of the construction industry payment system. We have done a lot of reforms; for example, payment claims can be lodged and there is a set, very short, time—10 or 15 days—within which the contractor has to respond to the payment schedule.

[4.40 pm]

Mr P.J. RUNDLE: This is a second reading speech!

Mr J.R. QUIGLEY: The member is asking me to wind it up. I will wind it up on the basis that he understands that we first had to address the anomaly that existed in Western Australia. Beyond that, I want to take it back to the national Building Ministers' Forum to try to promote the rest of the cascading trust scheme nationally.

Mr P.J. RUNDLE: Page 249 relates to the same thing. The government has allocated \$2.876 million for implementation and administration. The government obviously assumes that the bill will go through and everything is sweet, despite the fact that the minister has just acknowledged that there is no way that Parliament will recommence in March. What will that money be spent on?

Mr J.R. QUIGLEY: When we were drawing up the budget, we had to make provision for that. We are hopeful that this will get through very early next year. It is a very big priority of the government. In the olden days, all the people who were doing the work were employees and their wages were secure. There are some big contractors but there are a lot of mum-and-dad subcontractors with a Toyota Hilux and the like. They have to be protected from companies that phoenix. The Building Commissioner has to be given extra powers to make sure that people who run companies into the ground and do not pay their subbies do not just close up shop and phoenix into a new entity. There will be a lot of new functions for the department and especially for the Building Commissioner.

Mr P.J. RUNDLE: The line item is "Implementation and Administration". Can the minister define exactly what that is for? I assume that none of it is about retention moneys or whatever, and that it is just to administer the new legislation.

Mr J.R. QUIGLEY: I will ask the executive director of building and energy to be a little more specific in this regard.

Mr S. Abdoolakhan: The first part of it will be for new staff when the bill goes through. We will need new staff to administer the new legislation. New provisions are being proposed in the legislation. We will have to run investigations and take enforcement actions. There are also new provisions for registration. Resources will be allocated to reviewing the registration requirements such as making sure that people who have a history of insolvency are not reregistered or are deregistered. We have allocated funds for staffing to administer the new powers in the legislation. The second part is training to deal with the new legislation, the development of single-form contracts, new education videos and an education campaign for industry.

Mr P.J. RUNDLE: I refer to "Royalties for Regions Funding Update" under ongoing initiatives on page 249. From 2020–21 to 2022–23, there is a consistent budget allocation of \$3 000, then there is a jump to \$228 000 in 2023–24. Is there an explanation for that?

Mr J.R. QUIGLEY: I will ask the director to address that, if he would be so kind.

Mr D. Smith: The item “Royalties for Regions Funding Update” relates to funding that we receive—as do other agencies, I believe—for district allowances paid to our regional employees. I may ask the chief financial officer to correct me if I have this wrong, but the \$3 000 is the increase in this budget across the forward estimates. There has been an adjustment—presumably for an increase in those district allowances, which, from memory, is driven by a formula. The last year is the first time that 2023–24 has appeared in a budget, so it has the whole amount rather than just the increase over the previous years.

Mr P.A. KATSAMBANIS: I refer to the eleventh paragraph under significant issues impacting the agency on page 251. It refers to the “Building Confidence—Improving the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia” report. Why have the reforms based on that national report, which was handed down in February 2018, not been advanced so far? Why has the government waited for almost three years before even starting on it?

Mr J.R. QUIGLEY: The member is referring to the Shergold Weir report, which came down in February 2018. The “Building Confidence” report was commissioned, as the member knows, by the Building Ministers’ Forum. It made 24 recommendations to improve building industry legislation across Australia. In March 2019, the government, in conjunction with all other states and territories, responded to the “Building Confidence” report and committed to strengthening the building sector through a suite of reforms. The government’s response to the “Building Confidence” report is consistent with the WA Labor platform to ensure high-quality housing and commercial construction. The government has already made strides in progressing regulatory reform. The Department of Mines, Industry Regulation and Safety has released three consultation regulatory impact statements for industry to comment on strengthening registration requirements for high-risk building professionals and improving building safety by introducing greater rigour to the approvals and certification processes in the Building Act. The industry has been responding well to the proposed reforms, particularly in respect of the approvals process for residential and commercial construction, with many supporting the improvements to the building design documentation, third party review of high-risk design work and mandatory critical stage inspections.

The department is working at the moment to finalise the final recommendations to government and will be undertaking a cost–benefit analysis to ensure that these recommendations are fit for purpose. This is scheduled to be completed by the middle of next year. I understand that the department will also be releasing two other CRISs during the next financial year seeking comment on reforms to strengthen registration requirements for builders, project managers and owners’ representatives. Although the “Building Confidence” report identified the need for ambitious regulatory reform across Australia, it acknowledged that regulators must ultimately take time and care in properly considering and developing the reforms in their respective jurisdictions. The government is committed to getting these reforms right by actively working with the industry and community to evaluate any technical and practical issues raised and ensure that they are implemented, and we will do so.

[4.50 pm]

Mr P.A. KATSAMBANIS: Again on page 251, paragraph 14 refers to the response to the Grenfell Tower fire. It references the statewide audit that was conducted by the Building Commission of high-rise, high-risk privately and publicly owned buildings. There were 27 publicly owned buildings requiring remedial work. Fortnightly updates were being published on the department’s website, but the last one that is publicly available is dated March. Can we get an update on whether all the remedial action for the publicly owned buildings has been completed; and, if not, when is it likely to be completed?

Mr J.R. QUIGLEY: I ask the executive director to fill the member in on that, please.

Mr S. Abdoolakhan: The department has not been running the audit ourselves; we have been coordinating the responses of different departments. I can advise that the reports have been updated as we have been receiving new information from the different departments. To date, 10 buildings have been rectified. We are getting progress updates from the different departments and we will be updating the website as we get more details from those departments.

Mr P.A. KATSAMBANIS: Of the 27 buildings, 10 have been upgraded and the remedial works have been done. Is there a time frame for the rest of these buildings to be remediated? Obviously, we saw the catastrophic consequences that could occur. Thankfully, they did not occur here, and we do not want them to occur. Is there a time frame? These are publicly owned buildings. When are we likely to see them all remediated so that the risk is heavily reduced?

Mr J.R. QUIGLEY: I defer to the executive director again about the time frame.

Mr S. Abdoolakhan: We have not set any time frame, but all the different departments are managing their risk and their buildings effectively. They have other risk mitigation measures in place to manage the risk in the meantime. Replacing the cladding on buildings will take time and will disrupt operations in some of the buildings—that is why there is no set time frame—but in the meantime there are management plans in place to manage the risks.

Mr P.A. KATSAMBANIS: Are these management plans or risk mitigation strategies publicly available?

Mr S. Abdoolakhan: No, they are not publicly available.

Mr P.A. KATSAMBANIS: Moving to the privately owned buildings, because there was a significant number of those, is there any update on the compliance with the remedial action required on the privately owned buildings?

Mr S. Abdoolakhan: Of these buildings, 20 have been rectified—work has commenced on them. The others have been progressed and they have been receiving engineering reports. We are receiving regular updates on the progress of the remediation through the local governments and local councils.

Mr P.A. KATSAMBANIS: If 20 buildings have been rectified, how many remain outstanding or partially outstanding?

Mr S. Abdoolakhan: There are 31 buildings outstanding.

Mr P.A. KATSAMBANIS: Further to that, is there a time frame for those privately owned buildings to be remediated or rectified?

Mr S. Abdoolakhan: No; we have not set any time frame. They are working with the local government on the different plans and we are looking at the progress of remediation. So far, there is no concern about how well they are progressing.

Mr P.A. KATSAMBANIS: In the same way that there is an update published on the publicly owned buildings, is a similar update published on a website about the privately owned buildings?

Mr S. Abdoolakhan: Yes, there is. We have been updating them as we get more information; we will be updating them again very shortly.

Mr P.A. KATSAMBANIS: In relation to both the privately and publicly owned buildings, has any information about risk management been communicated by the department to the tenants of the buildings, or has the communication of the department been with only the landlords of those buildings?

Mr S. Abdoolakhan: We have met with all the affected councils and owners of affected buildings and informed them about the situation and what are the next steps going forward, and the management processes being implemented by the owners of the buildings.

Mr P.J. RUNDLE: My question relates to pages 254 to 256. The line item “Employees (Full-Time Equivalents)” appears on each of those three pages. Over those three areas, there is a rise in the last financial year of 90 FTEs, when we take that in total. The notes explain that the department has converted contractor work into permanent positions with no impact on the total cost of service. I assume that part of that is the 10-year roles in the Collie processing centre. What are the positions and roles of the extra 90 FTEs within the department?

Mr J.R. QUIGLEY: I will pass that to the director.

Mr D. Smith: Thank you, minister. As the question indicated, the FTE figures that are reported in the budget reflect the conversion of contract positions to full-time, and Collie positions are an element of that. That has occurred across all three service areas in the department—the resources advice and regulation area, the safety advice and regulation area, and the industry and consumer protection area as well. Various functions and roles were being conducted by contract positions across a range of areas. We went through a rigorous process of identifying within the department functions that were undertaken by those contract positions that could be done by full-time positions. It is not a one-for-one relationship between the contract positions and full-time positions. It was an identification of how we could structure ourselves to do the same work in a different way with a conversion, as the member noted, and no change to our total cost of service. Effectively, we transferred money from our operating budget into a salary budget, but across a range of positions. It was not a one-to-one conversion of a contract role into an FTE role.

[5.00 pm]

Mr P.J. RUNDLE: Where in the budget can I see a demonstration of the savings of the contractor costs? Is there a line item that demonstrates the savings that have occurred?

Mr D. Smith: This measure has not delivered savings and it was not intended to deliver savings. It was about identifying a different way to organise the department to achieve the same outcome. It was done on a neutral-cost basis that did not cost money, or seek to save money, either.

The appropriation was recommended.